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FISCAL IMPACT STATEMENT

LS 6155

BILL NUMBER: SB 258

NOTE PREPARED: Mar 25, 2008

BILL AMENDED: Mar 14, 2008

SUBJECT: Criminal Law and Corrections.

FIRST AUTHOR: Sen. Waterman

FIRST SPONSOR: Rep. V. Smith

BILL STATUS: Enrolled

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Long-Time Inmates* – It requires the Parole Board to review the sentence of a long term inmate who has not been convicted of a violent offense to determine whether the inmate has been rehabilitated and has suitable plans that would warrant discharge from custody, and requires the Department of Correction (DOC) to assist the parole board by identifying certain long term inmates to the parole board and providing certain other information. It specifies that an inmate whose review is denied by the Parole Board may seek a later review. It requires such an inmate released by the Parole Board to be placed on parole.
- B. *Sentencing Information* – Allows a court to: (1) send copies of certain reports relating to the conviction of an individual to the department; and (2) certify copies of judgments of conviction and sentences to receiving authorities; through any electronic means approved by DOC.
- C. *Internet Access for Offenders Scheduled to be Released* – It requires DOC to allow certain inmates to have Internet access to web sites that contain employment information in the 90 day period before an inmate is discharged, released on parole, released on probation, or assigned to a community transition program, and requires DOC to provide Internet training and employment counseling.
- D. *GPS Monitoring* – It provides that GPS monitoring for certain sex offenders is mandatory after June 30, 2009, and authorizes the parole board to require GPS monitoring before July 1, 2009.
- E. *Supervision of Sex or Violent Offenders* – It requires a sex or violent offender to report the offender's electronic mail address and certain Internet usernames. It provides that, as a condition of probation or parole, a sex offender: (1) must consent to the search of the sex offender's personal computer at any time; (2) must permit installation on the sex offender's personal computer or device with Internet capability of hardware or software to monitor the sex offender's Internet usage; (3) must be

- prohibited by a probation or parole officer from using or accessing certain web sites, chat rooms, or instant messaging programs frequented by children; and (4) may not delete, erase, or tamper with information on the sex offender's personal computer that relates to prohibited Internet usage.
- F. *New Crimes* – It makes it a Class A misdemeanor for a sex offender to use a social networking Internet web site or an instant messaging or chat room program that the offender knows is frequented by children. It makes it a Class B misdemeanor for certain persons at least 21 years of age to knowingly or intentionally communicate concerning sexual activity with a child less than 14 years of age with the intent to gratify the sexual desires of the person or the child. It enhances the offense to a Class A misdemeanor if it is committed by means of a computer network.
 - G. *Offenses Against Persons with Disabilities* – It makes committing an offense against a person with a disability an aggravating circumstance for sentencing purposes if the defendant knew or should have known that the victim was a person with a disability.
 - H. *Instruction on Safe Internet Use* – It requires a school corporation to include a mandatory instructional unit on safely using the Internet for grades 3 and above.
 - I. *Asset Seizures* – It specifically provides that law enforcement officials may seize computers, cellular telephones, and other equipment used to commit or facilitate, or intended to be used to commit or facilitate, sex crimes.
 - J. *Sex or Violent Offender Registration Period* – It specifies that the sex or violent offender registration period is not restarted based on the offender's commission of a subsequent offense.

Effective Date: July 1, 2008.

Explanation of State Expenditures: *Long-Time Inmates* – Depending on the decisions made by the Parole Board, this bill may reduce the number of offenders in DOC facilities in the long term and increase the number of offenders who may need to be supervised on parole. Parole Board members may incur meeting and travel reimbursement costs if public hearings outside of Indianapolis must be conducted.

Offenders who were sentenced for the following violent crimes (as defined by IC 35-50-1-2) are not eligible for this review:

- (1) murder (IC 35-42-1-1).
- (2) attempted murder (IC 35-41-5-1).
- (3) voluntary manslaughter (IC 35-42-1-3).
- (4) involuntary manslaughter (IC 35-42-1-4).
- (5) reckless homicide (IC 35-42-1-5).
- (6) aggravated battery (IC 35-42-2-1.5).
- (7) kidnapping (IC 35-42-3-2).
- (8) rape (IC 35-42-4-1).
- (9) criminal deviate conduct (IC 35-42-4-2).
- (10) child molesting (IC 35-42-4-3).
- (11) sexual misconduct with a minor as a Class A felony under IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2).
- (12) robbery as a Class A felony or a Class B felony (IC 35-42-5-1).
- (13) burglary as a Class A felony or a Class B felony (IC 35-43-2-1).
- (14) causing death when operating a motor vehicle (IC 9-30-5-5).

As of October 22, 2007, 11 offenders are imprisoned in DOC facilities for 25 years or longer (as specified in the bill) who might be eligible to be released under this bill. Their average age on January 25, 2008, was 54.

Education and conduct are two of the criteria that the Parole Board may consider when deciding to grant an early release. According to DOC records, none of these offenders have either a high school diploma or a GED. Ten of these 11 offenders were in the highest conduct group, the Credit Class I behavioral group, which receives one day of credit time for each day incarcerated.

Other criteria the Board may consider include, but are not limited to, assurance of suitable living quarters when the offender is released and proof of job offers from local employers where the offender would reside. There was no information available about these offenders' prospects for employment or other family or community support.

Cost Savings for DOC – Depending on the number of offenders who are released, the state could save up to \$19,185 per offender per year.

Internet Access for Offenders Scheduled to be Released – This bill would increase costs for the Department of Correction in the following areas:

- One-time expenses to install Internet-compatible equipment in secure areas.
- Software programming to restrict offenders to certain websites.
- Either additional staff to oversee offenders or reassigning staff to supervise offenders, particularly in facilities where offenders are in high-level security settings.

DOC could have three staffing issues to deal with in accommodating offenders who are being released:

- First, facilities with large offender populations, such as Miami, Plainfield, Putnamville, and Westville, will have 30 or more offenders released on average each week of the year.
- Second, staff in facilities such as the State Prison, Miami, and Wabash Valley, could experience more problems because more of the offenders being released from these facilities are in the higher security levels.
- Finally, DOC contracts with county sheriffs and outside groups to house some offenders. DOC may need to renegotiate contracts with these providers to assure that offenders being released from these facilities will be given Internet access.

Background:

Internet Access - Currently, only the Plainfield Reentry Facility permits offenders supervised access to the Internet to research employment prospects. The facility houses offenders who are to be released from DOC back into Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Putnam, or Shelby Counties.

Under current DOC rules, no offenders in any facility other than Plainfield Reentry has access to the Internet. Each facility has a prerelease reentry program which runs for 4 to 13 weeks prior to the offender's release.

In CY 2006, 16,379 offenders were released from DOC facilities at an average number of 315 offenders per week. The following shows the potential number of releases each week based on 2006 information.

Number of Offenders Released from DOC Facilities in CY 2006		
Facility	Annual Releases	Average Releases per Week
Branchville	916	18
Chain of Lakes	166	3
Correctional Industrial	609	12
County Jails	1,007	19
Edinburgh	394	8
Evansville Work Release	82	2
Henryville	210	4
Indianapolis Men's Work Release	274	5
Indianapolis Women's Work Release	154	3
Liberty Hall	217	4
Madison	301	6
Marion Co Work Release	28	1
Medearyville	148	3
Miami	1,544	30
New Castle	616	12
Pendleton	472	9
Plainfield	1,845	35
Plainfield Reentry	81	2
Putnamville	2,201	42
Reception Diagnostic	104	2
Rockville	1,043	20
South Bend Work Release	206	4
State Prison	413	8
Wabash	553	11
Westville	2,264	44
Women's Prison	531	10
Grand Total	<u>16,379</u>	<u>315</u>

Global Positioning Monitoring (GPS) – IC 35-38-2.5-3 describes GPS monitors as electronic devices that can record or transmit information 24 hours each day regarding the presence or absence of offenders from their home or at a precise location. Under current law all sexually violent predators released on parole must use a GPS monitor. This bill would give the Parole Board the discretion to require GPS monitoring for sexually violent offenders who are released between July 1, 2008 and June 30, 2009. Note: DOC is currently operating GPS pilot programs in Howard, St. Joseph and Vanderburgh Counties to examine the costs of GPS monitoring and their effectiveness in supervising sex offenders upon release. This evaluation will be used for developing the budget for the next biennium. There are an average 66 persons being monitored per day and collectively 100 persons.

New Crimes – This bill creates two new crimes that target sex offenders and adults using on-line chat rooms to communicate with children younger than 14.

<u>Offense</u>	<u>Description</u>	<u>Current Penalty</u>	<u>New Penalty</u>
Sex Offender Internet Offense	If convicted sex offenders use social networking Internet web sites, instant messaging or chat room programs that offender knows are frequented by children and if offender contacts a child or a person the offender believes is a child through the website or program.	Possibly technical violation for offenders on probation or parole	Class A Misdemeanor
Inappropriate Communication with a Child	Adults at least 21 years of age who knowingly or intentionally communicate about sexual activity with a child less than 14 to gratify sexual desires of adult or the child, or to entice the child to meet the adult in another location.	Possibly Class D child solicitation in some circumstances	Class B misdemeanor; Class A misdemeanor if using computer network

Offenses Against Persons with Disabilities – Courts could give convicted persons longer prison sentences if the person knew that their victim was a person with a disability. State expenditures would increase if an offender is incarcerated for a longer period of time. No data exists concerning how frequently crime victims have a disability. Ultimately, any increase in expenditures would depend on the actions of the offender and the sentencing decisions of the court.

The following table shows the minimum, advisory and maximum lengths of time that an offender could remain in prison for committing a crime against a person with a disability.

Felony Class	Minimum	Advisory	Maximum
Murder	45 years	55 years	65 years
A	20 years	30 years	50 years
B	6 years	10 years	20 years
C	2 years	4 years	8 years
D	six months	1.5 years	3 years

Explanation of State Revenues:

Explanation of Local Expenditures: *Mailing Sentencing Information from the Courts to DOC* – This provision adds a series of documents that the sentencing court will send to the Department of Correction. Under current law, these documents are presumably sent by postal service but as proposed, these documents could be sent by electronic mail.

The bill's effect on the administrative practices of the sentencing courts will be based on the following factors:

- The capacity of each sentencing court to e-mail these documents to the Department of Correction.

- The number of offenders committed from each county.

Counties with e-mail capacity should be able to e-mail these documents to the DOC with little or no added expense and could save postal expenses. Counties with limited computer capabilities are generally in rural areas. Counties in rural areas commit relatively fewer offenders to DOC.

Background: To illustrate, LSA examined the number of offenders who were committed to DOC from each county in FY 2007. The number of offenders committed to DOC ranged from a low of 2 offenders for the entire 12 months in Martin County, to a high of 4,872 in Marion County.

The following table summarizes these findings:

Average Number of Offenders Committed to DOC Per Week in FY 2007	
Frequency Per Week	Counties
One offender or less.	Benton, Blackford, Brown, Carroll, Cass, Clay, Clinton, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Greene, Hancock, Jackson, Jasper, Jay, Jefferson, Knox, Lagrange, Lawrence, Martin, Miami, Montgomery, Newton, Ohio, Orange, Owen, Parke, Perry, Pike, Posey, Pulaski, Randolph, Ripley, Spencer, Steuben, Sullivan, Switzerland, Tipton, Union, Vermillion, Warren, Warrick, Washington, Wells, White, Whitley
More than one offender, less than three.	Adams, Boone, Clark, Dekalb, Floyd, Grant, Harrison, Henry, Howard, Jennings, Kosciusko, Laporte, Marshall, Morgan, Noble, Porter, Putnam, Rush, Scott, Shelby, Starke, Tippecanoe, Wabash
More than three offenders, less than five.	Bartholomew, Dearborn, Delaware, Hamilton, Hendricks, Huntington, Monroe, Noble
More than five offenders, fewer than ten.	Johnson, Lake, Madison, St. Joseph, Vanderburgh, Vigo, Wayne
More than ten offenders.	Allen, Elkhart, Marion

Sex or Violent Offender Registration Period – When sex or violent offenders are released from prison they register with the sheriff in the counties in which they live or work on a periodical basis for ten years. If they return to prison for a new sex offense they become sexually violent predators and they must register for life with the sheriff when they are released. Current law appears to be silent when a sex or violent offender is sentenced for a new crime that is not a sex or violent offense (like theft or drunk driving). It is assumed under current law that these offenders would be required to register again for another ten years. This provision specifies that offenders who are sentenced for committing another crime that is not a sex crime would register for the balance of the ten years when they are released from prison or jail. Ultimately, this will reduce the workload of county sheriffs if offenders are not required to register for more than ten years for committing one sex crime.

Instruction to 3rd through 12th Grade Students About Internet Safety – School corporations are required to provide instruction to students starting in the 3rd grade regarding Internet safety. This provision will increase the workload of school staff. Actual workload increases will depend on administrative decisions made by the state Department of Education.

Explanation of Local Revenues:

State Agencies Affected: Department Of Correction; Department of Education, Parole Board

Local Agencies Affected: Trial courts with criminal jurisdiction, county sheriffs, school corporations.

Information Sources: Department Of Correction.

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